

## **APPENDIX 2**

**SCHEDULE 4.0 Network Interconnection Schedule**

LATA	NORTHLAND-IP	BA-IP	Activation Date
TBD	TBD	TBD	TBD

## EXHIBIT 2

Jack H. White  
Vice President and Associate General Counsel



1320 North Courthouse Road  
Arlington, VA 22201

June 22, 2001

**BY CERTIFIED U.S. MAIL**

Gerry Nicholson  
Northland Networks Ltd.  
258 Genesee Street  
Utica, NY 13501

Re: Implementation of FCC's Order on Remand

Dear Customer:

In a notice dated May 14, 2001, you were advised of Verizon's election to implement the intercarrier compensation regime for Internet traffic set forth in the FCC's *Order on Remand and Report and Order*, CC Docket Nos. 96-98, 99-68 (adopted April 18, 2001) (the "Order on Remand"). This election applies to all Verizon operating telephone companies with which your company has an effective interconnection agreement.

Although it is Verizon's position that the compensation regime set forth in the Order on Remand is self-effecting by operation of various provisions of your interconnection agreement, including its change in law provisions, Verizon has prepared a short amendment, attached hereto, that conforms your agreement to the terms of the Order on Remand. Without waiving Verizon's position that this amendment is not required to implement the terms of the Order on Remand, we are requesting that you review the attached amendment and indicate your consent thereto by signing two copies of the document and returning them to:

Ms. Antonia Siebert  
Verizon Legal Department  
1320 North Court House Road, 8th Floor  
Arlington, VA 22201  
Phone: 703-974-4851  
Fax: 703-974-0259

Once we have received the two signed documents, a single fully executed document will be returned to you.

Jack H. White  
Implementation of FCC's Order on Remand  
June 22, 2001

If you wish to suggest changes to the attached amendment, we are ready to meet with you by telephone or otherwise to negotiate appropriate revisions. Please provide your proposed changes to Ms. Siebert as soon as possible, and let her know when you or your representative will be available to confer.

As stated in Verizon's industry notice of May 14, 2001, Verizon has also offered, as required by the Order on Remand, to amend your interconnection agreement in each state to implement an alternative rate plan for termination of reciprocal compensation traffic originated by either party that would mirror the rates applicable to Internet traffic in that state. We expect that this alternative rate plan will only be of interest to carriers with a net balance of traffic in Verizon's favor; but if you should nevertheless wish to adopt that alternative rate plan in the state of New York, please advise Ms. Siebert of that fact and we will forward an appropriate form of amendment.

Sincerely,



Jack H. White

Attachment

AMENDMENT NO. \_\_  
to the  
INTERCONNECTION AGREEMENT  
between  
VERIZON NEW YORK INC.  
and  
Northland Networks Ltd.

This Amendment (the "Amendment") to the Interconnection Agreement between Verizon New York Inc. and Northland Networks Ltd. (the "Agreement") is effective June 14, 2001.

Notwithstanding any other provision of the Agreement, Local Traffic does not include any Internet traffic. The Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of Internet traffic shall be governed by the Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98 and 99-68.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed and delivered by their duly authorized representatives.

Northland Networks Ltd.

Verizon New York Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: Jeffrey A. Masoner

Title: \_\_\_\_\_

Title: Vice-President - Interconnection  
Services Policy & Planning

### EXHIBIT 3

ROLAND, FOGEL, KOBLENZ & PETROCCIONE, LLP

FILE COPY

ATTORNEYS AT LAW

1 COLUMBIA PLACE

ALBANY, NEW YORK 12207

KEITH J. ROLAND  
USHER FOGEL  
MARK L. KOBLENZ  
EMILIO A. F. PETROCCIONE

KEVIN M. COLWELL  
GEORGE A. ROLAND\*  
COUNSEL

\*ALSO ADMITTED TO FLORIDA BAR

TEL: (518) 434-8112

FAX: (518) 434-3232

EDMUND A. KOBLENZ  
1908-1972  
A. ABBA KOBLENZ  
1922-1979

June 28, 2001

Jack H. White  
Vice President and Associate  
General Counsel  
Verizon  
1320 North Courthouse Road  
Arlington, Virginia 22201

Re: Northland Networks, Ltd. - Implementation of FCC's Internet  
Compensation Order

Dear Mr. White:

I am the attorney for Northland Networks, Ltd. (Northland), a Competitive Local Exchange Carrier in Utica, New York.

In that capacity, I respond to your letter of June 22, 2001, to Gerry Nicholson of Northland proposing an amendment to the Interconnection Agreement between Northland and Verizon which, according to Verizon, conforms the Interconnection Agreement with the terms of the FCC's April 18, 2001, Order on Remand.

Please be advised that Northland does not agree with your interpretation of applicable law. Under the terms of the original New York Telephone Company Regulatory Incentive Plan in New York, Verizon (through its predecessors) voluntarily committed itself to paying reciprocal compensation to CLECs in New York (including reciprocal compensation for internet traffic) in accordance with determinations by the New York State Public Service Commission, within and without the formal structure of arbitration petitions. Because of Verizon's voluntary commitments to pay reciprocal compensation on internet traffic, under rules and rates established by the Public Service Commission, Verizon has waived whatever benefit it might otherwise be entitled to under the FCC's Order on Remand.

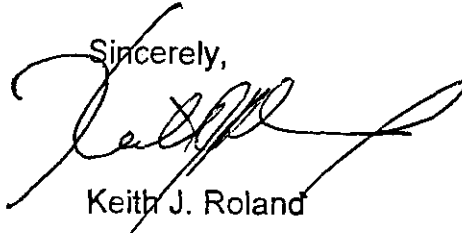
Furthermore, Northland does not believe the FCC's Order is consistent with applicable statutory and constitutional law, and accordingly believes the FCC's Order will be overturned in the context of the pending judicial appeal. Thus, even if Verizon had not waived the benefits of the FCC's Order, Northland would not be willing to accept the proposed amendment unless it provided for a true-up, using the otherwise applicable PSC rates for internet traffic, in the event the FCC's Order is vacated or modified.



Jack H. White  
June 28, 2001  
Page Two of Two

To the extent Verizon forwards payments of reciprocal compensation to Northland calculated in a manner other than provided in the original Northland/New York Telephone Interconnection Agreement, Northland protests and objects to such payments as unlawful, and reserves all rights to challenge such payments as inadequate.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith J. Roland", written over the word "Sincerely,".

Keith J. Roland

KJR:tlm  
cc: Gerry Nicholson

---

EXHIBIT 4

Verizon New York Inc.  
1095 Avenue of the Americas  
Room 3735  
New York, NY 10036  
Tel 212 395-6405  
Fax 212 768-7568

Gayton P. Gomez  
Regulatory Counsel



April 29, 2002

**BY HAND**

Honorable Janet Hand Deixler  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

**Re: Petition of Verizon New York Inc. for an Expedited Order  
Declaring That No Amendments to Its Interconnection Agreement  
with Northland Networks, Ltd. Is Necessary, Or Alternatively,  
Approving Verizon's Proposed Amendment**

Dear Secretary Deixler:

Enclosed please find the Petition of Verizon New York Inc. for Relief under the Expedited Dispute Resolution Process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G.P. Gomez", written over a horizontal line.

Gayton P. Gomez

Encl.

cc: Keith J. Roland, Esq. (By Overnight Delivery)  
Mr. Gerry Nicholson (By Overnight Delivery)

RECEIVED  
PUBLIC SERVICE  
COMMISSION  
OSCC-FILES-ALBANY  
2002 APR 29 PM 4:43

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

----- :  
Petition of Verizon New York Inc. for an :  
Expedited Order Declaring That No :  
Amendments to Its Interconnection :  
Agreement with Northland Networks, Ltd. :  
Is Necessary, Or Alternatively, Approving :  
Verizon's Proposed Amendment :  
----- :

Case \_\_\_\_\_

**PETITION OF VERIZON NEW YORK INC. FOR RELIEF  
UNDER THE EXPEDITED DISPUTE RESOLUTION PROCESS**

Sandra DiIorio Thorn  
Gayton P. Gomez  
Verizon New York Inc.  
1095 Avenue of the Americas  
New York, New York 10036  
(212) 395-6515  
(212) 395-6405  
(212) 768-7568 (fax)  
sandra.d.thorn@verizon.com  
gayton.p.gomez@verizon.com

Kimberly A. Newman  
Hunton & Williams  
1900 K Street, N.W., Suite 1200  
Washington, D.C. 20006  
(202) 955-1500  
knewman@hunton.com

Dated: New York, New York  
April 29, 2002

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION .....	1
II. FACTUAL BACKGROUND.....	2
III. ARGUMENT.....	4
A. The FCC's Interim Rate Regime Applies Pursuant to the Express Terms of The Agreement.....	4
B. Alternatively, If the Commission Determines That an Amendment Is Worthwhile, the Commission Should Accept Verizon's Proposed Amendment.....	9
C. Northland's Rationale for Refusing to Implement the <i>Order on</i> <i>Remand</i> Is Critically Flawed. ....	11
1. The Regulatory Performance Plan Does Not Require Verizon to Pay Reciprocal Compensation for Internet-Bound Traffic.....	11
2. Northland Misconstrues the FCC's Rate Mirroring Requirement.....	12
3. Northland's Insistence on Amendment Language Automatically Imposing the Commission's Previous Rates in the Event of a Subsequent Legal Change Is Unreasonable.....	13
D. Sound Public Policy Requires the FCC's Interim Rate Regime to Apply to Traffic Exchanged Between Verizon and Northland as of June 14, 2001 .....	14
IV. CONCLUSION .....	16

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

----- :  
Petition of Verizon New York Inc. for an :  
Expedited Order Declaring That No :  
Amendments to Its Interconnection :  
Agreement with Northland Networks, Ltd. :  
Is Necessary, Or Alternatively, Approving :  
Verizon's Proposed Amendment :  
----- :

Case \_\_\_\_\_

PETITION OF VERIZON NEW YORK INC. FOR RELIEF  
UNDER THE EXPEDITED DISPUTE RESOLUTION PROCESS

I. INTRODUCTION

Verizon New York Inc. ("Verizon") submits this Petition in accordance with the Commission's Expedited Dispute Resolution Process established in Case 99-C-1529.

In clear contravention of the law and the terms of the interconnection agreement between the parties (the "Agreement"),<sup>1</sup> Northland Networks, Ltd. ("Northland") refuses to apply the interim rate regime established in the FCC's *Order on Remand*.<sup>2</sup> The Commission should recognize Northland's strategy for what it is – an attempt to forestall implementation of the *Order on Remand* so that Northland may collect compensation for Internet-bound traffic at higher rates than those mandated by the FCC.

Verizon respectfully requests that the Commission expeditiously issue an order declaring that the interim rate regime established in the *Order on Remand* was

<sup>1</sup> The Agreement is attached hereto as Exhibit A.

<sup>2</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-carrier Compensation for Internet-bound Traffic*, CC Docket Nos. 96-98 and 99-68, FCC 01-131, Order on Remand and Report and Order (FCC Apr. 27, 2001) ("*Order on Remand*").

implemented under the terms of Agreement as of June 14, 2001. Alternatively, Verizon asks the Commission to expeditiously issue an order approving Verizon's proposed amendment to the Agreement.<sup>3</sup> To the extent Verizon has paid Northland for Internet-bound traffic at a level higher than that required by the *Order on Remand* for any period after June 14, 2001, Verizon requests that Northland be directed to return promptly the difference between those rates.

## II. FACTUAL BACKGROUND

On April 1, 1999, Northland adopted a previously approved agreement between Verizon and ACC National Telecom Corp. The Agreement does not even mention Internet-bound traffic. Instead, the Agreement requires the Parties to compensate each other for transport and termination of "Reciprocal Compensation Traffic,"<sup>4</sup> which it limits to traffic that "qualifies for Reciprocal Compensation pursuant to the terms of [the] Agreement and any *applicable law*."<sup>5</sup> "Reciprocal Compensation" in turn means reciprocal compensation as described in Section 251(b)(5) of the Telecommunications Act of 1996 (the "Act"),<sup>6</sup> as that Act is "from time to time interpreted in the duly authorized rules and regulations of the FCC or PSC."<sup>7</sup>

On April 27, 2001, the FCC determined that Internet-bound traffic is not subject to the reciprocal compensation obligations of the Act. In the *Order on Remand*, the FCC established an interim rate regime for Internet-bound traffic, and expressly stated that

---

<sup>3</sup> Verizon's proposed amendment is attached as Exhibit B. Northland has not proposed an amendment.

<sup>4</sup> *Id.* § 7.2.

<sup>5</sup> *Id.* § 1.1.58.

<sup>6</sup> *Id.* § 1.1.57.

<sup>7</sup> *Id.* § 1.1.6.

state commissions no longer have authority to determine appropriate intercarrier compensation for Internet-bound traffic.<sup>8</sup> As this Commission has expressly recognized, the FCC's interim rate regime was to be implemented as of the effective of the *Order on Remand*, June 14, 2001.<sup>9</sup>

On May 14, 2001, almost one year ago, Verizon notified Northland that it had elected to implement the FCC's interim rate regime for Internet traffic. Verizon again provided notice to Northland of its election on June 22, 2001.<sup>10</sup> The June 22, 2001 letter specifically noted that the interim rate regime was self-effecting under the Agreement, but also included a form amendment that Northland could apply to any of its effective interconnection agreements to memorialize the new FCC rate regime.

Northland replied on June 28, 2001, stating that it did not agree that the FCC's interim rate regime was applicable to the parties' relationship.<sup>11</sup> Specifically, Northland claimed that notwithstanding the *Order on Remand*, Verizon had voluntarily committed itself to paying reciprocal compensation for Internet traffic as part of the original New York Telephone Company Performance Regulation Plan (the "Performance Plan").<sup>12</sup> Northland further responded that any amendment would need to include "true-up"

---

<sup>8</sup> *Order on Remand* ¶ 82.

<sup>9</sup> *Petition of Choice One Communications of New York Inc. Pursuant to Sections 252(b) and 252(i) of the Telecommunications Act of 1996 for Arbitration to Establish Intercarrier Agreement with Verizon New York Inc.*, Case 01-C-0864, Order Requiring Entry Into An Interconnection Agreement and Dismissing Petition for Arbitration and Motion to Bifurcate Issues, at 6 (N.Y. PSC Oct. 25, 2001) ("*Choice One Order*"). Similarly, the Connecticut Department of Public Utility Control recently found that: "The FCC will exercise its authority pursuant to § 201 of the Telecom Act for ISP-bound traffic beginning on the effective date of the ISP Order and determine the appropriate intercarrier compensation for ISP-bound traffic." *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Docket No. 01-01-29, Decision, 2002 Conn: PUC LEXIS 23, at \*133 (Conn. DPUC Jan. 30, 2002).

<sup>10</sup> See Exhibit C (June 22, 2001 Verizon letter).

<sup>11</sup> See Exhibit D (June 28, 2001 Northland letter).



language automatically incorporating the Commission's rates for Internet traffic in the event the *Order on Remand* were vacated or modified.

Verizon answered that the Performance Plan does not require Verizon to pay for ISP-bound traffic and that, in any event, the *Order on Remand* ended states' authority to determine intercarrier compensation for Internet traffic as of June 14, 2001.<sup>13</sup> Verizon further noted that any amendment to the Agreement should give effect to subsequent changes in law when such changes occur.<sup>14</sup>

During the weeks that followed, the parties continued to discuss the *Order on Remand* but Northland consistently refused to implement the *Order*. Northland further asserted that Verizon could not apply the FCC's rates because the FCC conditioned application of its rate regime upon all traffic being exchanged between the parties at the FCC's rates.<sup>15</sup> Now, nearly eleven months after the FCC's interim rate regime became effective, Northland has yet to implement that regime.

### III. ARGUMENT

#### A. The FCC's Interim Rate Regime Applies Pursuant to the Express Terms of The Agreement.

The Agreement's express terms incorporate the FCC's interim rate regime. Not a word of the Agreement needs to be amended in order to apply the FCC's new rates.

The Agreement does not state that reciprocal compensation applies to Internet-bound traffic. Instead, the express terms of the Agreement require reciprocal

---

(... continued)

<sup>12</sup> *Id.*

<sup>13</sup> See Exhibit E (August 16, 2001 Verizon letter). As discussed below, in any event, all obligations under the Performance Plan were extinguished as of March 1, 2002.

<sup>14</sup> *Id.*

<sup>15</sup> See Exhibit F (October 25, 2001 Northland letter).

compensation only for traffic that is subject to such obligations under applicable law. Indeed, the contractual language tracks the requirements of the Act.<sup>16</sup> As explained below, at most, the Agreement required the payment of reciprocal compensation for Internet-bound traffic only for as long as this Commission's *Convergent Traffic Order*<sup>17</sup> provided the "applicable law" under Section 1.1.58 of the Agreement, the provision dealing specifically with reciprocal compensation. As a result of the *Order on Remand*, the *Convergent Traffic Order* no longer governed Internet-bound traffic.

The Agreement ties the obligation to pay reciprocal compensation to applicable federal and state law, thereby requiring the Agreement to reflect applicable law changes. Prior to the *Order on Remand*, the FCC had permitted the Commission to set the applicable law with regard to reciprocal compensation for Internet-bound traffic. At that time, this Commission held that Internet-bound traffic was intrastate and required payment of reciprocal compensation.<sup>18</sup> Verizon has consistently maintained that Internet-bound traffic was interstate in nature and therefore not subject to reciprocal compensation. However, until the *Order on Remand* became effective, Verizon, under protest, complied with the Commission's rulings and paid reciprocal compensation for Internet-bound traffic.

The FCC's *Order on Remand* changed all that. As the FCC found, Internet-bound traffic is information access and is not subject to the reciprocal compensation obligations

---

<sup>16</sup> See *Starpower Communications v. Verizon Virginia, Inc.*, File Nos. EB-00-MD-19, EB-00-MD-20, FCC 02-105, Memorandum Opinion and Order, ¶ 31 (FCC Apr. 28, 2002) ("*Starpower*"), attached as Exhibit G. As discussed *infra* at 9, this case held that, because the language of the agreements at issue tracked applicable law, no amendment was required to implement the *Order on Remand*.

<sup>17</sup> See *Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation*, Case 99-C-0529, Opinion and Order Concerning Reciprocal Compensation, Opinion No. 99-10 (N.Y. PSC Aug. 26, 1999) ("*Convergent Traffic Order*").

<sup>18</sup> See *id.*

of the Act.<sup>19</sup> Thus, that traffic does not and never did satisfy the definition of “Reciprocal Compensation” under Section 1.1.57 of the Agreement. Moreover, under Section 1.1.58 of the Agreement, the FCC’s interim rate regime replaced this Commission’s decisions as the “applicable law” establishing rates for Internet-bound traffic, effective June 14, 2001.<sup>20</sup>

The FCC’s *Order on Remand* makes this latter point clear. The FCC said that:

Because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic . . . state commissions will no longer have authority to address this issue.<sup>21</sup>

The FCC recognized that this Commission and other state commissions had created their own rate regimes governing reciprocal compensation for Internet-bound traffic,<sup>22</sup> but it made clear that these state commission decisions applied only for the period prior to June 14, 2001:

This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic *for the period prior to the effective date of the interim regime we adopt here.*<sup>23</sup>

The FCC allowed only retroactive effect for state commission decisions because, prospectively, it had prescribed a comprehensive plan. Its regime explicitly governs the compensation that incumbent local telephone companies must offer to every CLEC in their territory after June 14, 2001.<sup>24</sup> There is, therefore, no room left in which a state

---

<sup>19</sup> *Order on Remand* ¶ 3.

<sup>20</sup> The *Convergent Traffic Order*, of course, remains the applicable law for traffic other than Internet-bound traffic.

<sup>21</sup> *Order on Remand* ¶ 82.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* (emphasis added).

<sup>24</sup> *Id.* ¶ 89.

reciprocal compensation plan for Internet-bound-traffic could operate after June 14, 2001.

The only exception to this comprehensive plan is for pre-*Order on Remand* interconnection agreements which, by their terms, specifically require reciprocal compensation for Internet-bound traffic, and do not contain change-of-law provisions -- an exception which the FCC created explicitly.<sup>25</sup> By contrast, it created no such explicit exception for state commission decisions concerning Internet-bound traffic for the period after June 14, 2001.

As a result, this Commission has recognized that since June 14, 2001, the FCC "reserves to itself the authority to determine the appropriate intercarrier compensation for Internet-bound traffic,"<sup>26</sup> and several other state commissions have reached the same conclusion. For example, the Connecticut Department of Public Utility Control held:

that intercarrier compensation for ISP-bound traffic is within the jurisdiction of the FCC and that on a going forward basis, the Department has been preempted from addressing this issue beyond the effective date of the ISP Order.<sup>27</sup>

The Indiana Utility Regulatory Commission has reached the same conclusion,<sup>28</sup> and so has a federal district court.<sup>29</sup>

---

<sup>25</sup> *Id.* ¶ 82 (noting that the *Order on Remand* "does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions").

<sup>26</sup> *Choice One Order* at 6.

<sup>27</sup> *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Docket No. 01-01-29, Decision, 2002 Conn. PUC LEXIS 23, at \*1,19 (Conn. DPUC Jan. 30, 2002).

<sup>28</sup> *Petition to Open Commission Investigation into the Treatment of Reciprocal Compensation for Internet Service Provider Traffic*, Cause No. 41737, Dismissal Order, 2001 Ind. PUC LEXIS 538 (Ind. URC Sept. 5, 2001).

<sup>29</sup> *Michigan Bell Telephone Company v. Baraga Telephone Company, et al*, File No. 2:00-CV-136 (W.D. Mich. Aug. 8, 2001) ("*Michigan Bell*") (holding that a state tariff governing reciprocal compensation for Internet-bound traffic remained in effect for the period prior to the *Order on Remand*'s effective date, but not after).

Therefore, when the *Order on Remand* became effective, it replaced this Commission's *Convergent Traffic Order* as the "applicable law" with regard to internet traffic under Section 1.1.58 of the Agreement, and, from June 14, 2001 forward, the parties' compensation obligations for Internet-bound traffic were controlled by the FCC's interim rate regime.

In April of this year, the Pennsylvania Commission unanimously reached the same conclusion. It held that, where the parties intended that their agreement should change as applicable law changes, the FCC's interim rate regime implements as of June 14, 2001.<sup>30</sup>

Because the Agreement tracks the requirements of the Act, no amendment is required. The FCC's recent decision in *Starpower Communications v. Verizon Virginia Inc.* held that two agreements containing language analogous to that in the Agreement did not require any compensation for Internet-bound traffic.<sup>31</sup> Like the agreement in *Starpower*, the language in the Agreement "reveal[s] an intent to track the Commission's interpretation of the scope of section 251(b)(5), i.e., whatever the Commission determines is compensable under section 251(b)(5) will be what is compensable under the agreement."<sup>32</sup> Therefore, as in *Starpower*, no amendment is necessary to incorporate the FCC's ruling into the Agreement.

---

<sup>30</sup> *Petition of Verizon Pennsylvania Inc. for Resolution of Dispute with WorldCom, Inc. Pursuant to the Abbreviated Dispute Process*, Docket No. A-310752F700, Motion of Commissioner Terrance J. Fitzpatrick, at 3, Public Meeting (Pa. PUC Apr. 11, 2002), attached as Exhibit H.

<sup>31</sup> *Starpower* ¶¶ 31, 41. The FCC found that a third agreement that did not contain a change-of-law provision and that linked the determination of whether traffic was local to Verizon South's tariff did require compensation for Internet-bound traffic. The provisions of that "interim" interconnection-only agreement share nothing in common with the Agreement at issue here.

<sup>32</sup> *Starpower* ¶¶ 31, 41. See also *id.* ¶ 29, n.96.

Similarly, in an arbitration between Verizon and Global NAPs ("GNAPs"), the Rhode Island Public Utilities Commission concluded that the new rate regime applied as of June 14, 2001, under circumstances paralleling those presented here.<sup>33</sup> As with the Agreement at issue here, the interconnection agreement at issue in the Rhode Island proceeding did not define "Reciprocal Compensation" or "Reciprocal Compensation Traffic" to require reciprocal compensation payments for Internet-bound traffic.<sup>34</sup>

**B. Alternatively, If the Commission Determines That an Amendment Is Worthwhile, the Commission Should Accept Verizon's Proposed Amendment.**

As discussed above, the parties do not need to modify a word of the Agreement in order to make the interim rate regime effective as of June 14, 2001. However, if the Commission believes that an amendment is appropriate to memorialize the new FCC rate regime, Section 34.0 would provide the vehicle for such an amendment. Section 34.0 provides that the Agreement:

is subject to change or modification as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction or *as may be required by either Party based on any significant change in FCC or PSC rules which may impact the provision of Unbundled Network Elements, Wholesale Services and other facilities and services provided under this Agreement or the rights and obligations of the Parties under the Act.* The Parties shall use best efforts to negotiate in good faith revisions to this Agreement to incorporate any changes or modifications as may be required under this subsection.<sup>35</sup>

---

<sup>33</sup> *Complaint of Global NAPS, Inc. Against Bell Atlantic - Rhode Island Regarding Reciprocal Compensation*, Docket No. 2967, Report and Order, at 5 (R.I. PUC Feb. 20, 2002), attached as Exhibit I.

<sup>34</sup> *Id.* The Maryland Commission also recently acknowledged the importance of individual contract provisions in implementing the *Order on Remand* when it deferred decision as to the applicability of the Order until after having had an opportunity to review specific contract sections. The Commission did find, however, that individual contract provisions may automatically amend a contract if the law changes. *In the Matter of the Petition of Verizon Maryland, Inc. For A Declaratory Ruling and For An Order Approving Amendments To Interconnection Agreements*. Case No. 8914, Order No. 77578, at 5 (Md. PSC Feb. 28, 2002).

<sup>35</sup> Agreement § 34.0 (emphasis added).

By categorically identifying Internet-bound traffic as interstate under the Act and prescribing an interim rate regime for the exchange of such traffic, the *Order on Remand* significantly changed the applicable law in New York pertaining to services that provide transport, switching, and connection of Internet-bound traffic. Indeed, at paragraphs 30 through 51 of the *Order on Remand*, the FCC's statutory analysis demonstrates that by virtue of Section 251(g) of the Act, in 1996 Congress excluded Internet traffic (as a form of "information access") from the reach of reciprocal compensation under Section 251(b). Thus, even if the Act and the express terms of the Agreement had not already excluded Internet-bound traffic from the Agreement's reciprocal compensation obligations, Section 34.0 would obligate Northland to amend the contract to reflect the FCC rate regime established in the *Order on Remand*.

The amendment can be simple and straightforward. Verizon's proposal, which is attached to this Petition as Exhibit B, provides that the rights and obligations of Northland and Verizon with respect to any intercarrier compensation due in connection with their exchange of Internet-bound traffic shall be governed by the *Order on Remand*.

Nothing more is necessary. The FCC set out its rate regime for Internet-bound traffic in considerable detail in its *Order on Remand*, and there is no need to restate or paraphrase those requirements in the Agreement. As this Commission determined in a recent arbitration between Verizon and the AT&T entities, the "FCC's order speaks for itself, and there is no need for the agreement to include any terms, conditions or rates for the internet traffic that the FCC order addresses."<sup>36</sup>

---

<sup>36</sup> *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc., Case 01-C-0095. Order Resolving Arbitration Issues*, at 43 (N.Y. PSC July 30, 2001).

**C. Northland's Rationale for Refusing to Implement the *Order on Remand* Is Critically Flawed.**

During the discussions Verizon initiated with Northland to implement the *Order on Remand*, Northland cited several reasons for its refusal to implement the order. None of these reasons justify Northland's refusal.

**1. The Regulatory Performance Plan Does Not Require Verizon to Pay Reciprocal Compensation for Internet-Bound Traffic.**

Northland contends that Verizon has waived implementation of the *Order on Remand* in New York because it voluntarily committed to pay reciprocal compensation to CLECs for Internet-bound traffic as part of the Performance Plan. Northland's contention is simply wrong.

The Performance Plan does not require Verizon to pay such compensation. Indeed, the plain language of the Performance Plan could not be clearer: it does not include Internet traffic. Verizon's commitment was to pay and receive reciprocal compensation for the "exchange of local end user traffic" between it and other CLECs "providing simultaneous local two way service."<sup>37</sup> Internet-bound traffic is neither "local end user traffic" nor is it considered local two-way service. Indeed, the overwhelming characteristic of internet traffic is that it is one-way only. To the extent Verizon has paid compensation for Internet-bound traffic in New York, it has done so pursuant to the express Commission orders apart from the Performance Plan.<sup>38</sup> Verizon has never

---

<sup>37</sup> *Proceeding on Motion of the Commission to Investigate Performance-Based Incentive Regulatory Plans for New York Telephone Company - Track 2*, Case 92-C-0665, Performance Regulation Plan, § V.C.3.

<sup>38</sup> *See Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic*, Case 97-C-1275, *et al.*, Order Denying Petition and Instituting Proceeding (N.Y. PSC July 17, 1997); *Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation*, Case 99-C-0529, Opinion and Order Concerning Reciprocal Compensation, Opinion No. 99-10 (N.Y. PSC Aug. 26, 1999).



voluntarily agreed to pay compensation for Internet-bound traffic and it has not waived the effectiveness of any provision of the *Order on Remand*.<sup>39</sup>

**2. Northland Misconstrues the FCC's Rate Mirroring Requirement.**

Northland further contends that the FCC conditioned application of its interim rate regime upon all traffic being exchanged between an ILEC and CLEC at the FCC rates. Northland's interpretation of the FCC's rate "mirroring" rule is flat wrong. Nothing in the *Order on Remand* suggests that an ILEC must exchange all traffic at the FCC's interim rates as a prerequisite for application of those rates to Internet-bound traffic. The FCC's interim rate regime applies automatically once an ILEC "offers" to exchange 251(b)(5) traffic at those same rates.

In particular, Paragraph 89 of the *Order on Remand* sets forth the FCC's rate mirroring requirement:

It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed. Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to "pick and choose" intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that we adopt here apply, therefore, only if an incumbent LEC *offers to* exchange all traffic subject to section 251(b)(5) at the same rate. Thus, if the applicable rate cap is \$.0010/mou, the ILEC must *offer to* exchange section 251(b)(5) traffic at that same rate. Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has ordered bill and keep, it must *offer to* exchange all section

<sup>39</sup> In any case, the Performance Plan was extinguished by this Commission's order of February 27, 2002. See *Proceeding on Motion of the Commission to Consider Cost Recovery by Verizon and to Investigate the Future Regulatory Framework; Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Cases 00-C-1945 and 98-C-1357, Order Instituting Verizon Incentive Plan (N.Y. PSC Feb. 27, 2002).

251(b)(5) traffic on a bill and keep basis. For those incumbent LECs that choose not to *offer* to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates. This “mirroring” rate ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.<sup>40</sup>

Verizon has repeatedly offered all New York CLECs the opportunity to exchange Section 251(b)(5) traffic at the interim rates and has posted its mirror rates on its website. The “mirroring rule” does not require anything more.

**3. Northland’s Insistence on Amendment Language Automatically Imposing the Commission’s Previous Rates in the Event of a Subsequent Legal Change Is Unreasonable.**

Northland will not agree to implement the *Order on Remand* unless Verizon agrees to a “true-up,” using the Commission’s previously ordered rates for Internet-bound traffic in the event the *Order on Remand* is subsequently vacated or modified.<sup>41</sup> Without knowing in advance exactly what a particular change to the *Order on Remand* will require, however, the only correct approach would be for the parties to address that change if and when it occurs.

If the *Order on Remand* is reversed, modified, or vacated, the parties’ rights and obligations with respect to compensation for Internet-bound traffic should depend on the precise terms of that judicial order. For example, if the D.C. Circuit were to reverse or revise the FCC’s proposed cap on the volume of Internet traffic subject to its interim compensation, and nothing more, Northland’s proposal would, nonetheless, require the parties to apply the Commission’s previously adopted rates applicable to all convergent

---

<sup>40</sup> *Order on Remand* ¶ 89 (emphasis added; footnotes deleted). The FCC again explained its rate offer and mirroring requirement in its recently-filed brief with the DC Circuit Court. *WorldCom, Inc. v. FCC*, No. 01-1218, Brief for Respondents, at 19 (D.C. Cir. Sept. 27, 2001), attached as Exhibit J.

<sup>41</sup> See Exhibit D (June 28, 2001 Northland letter).

traffic, even if that result were contrary to the court's holding. Such a complete return of the status quo prior to the *Order on Remand*, rather than a result tailored to the court's decision, would unduly undermine the FCC's stated policy objectives.

**D. Sound Public Policy Requires the FCC's Interim Rate Regime to Apply to Traffic Exchanged Between Verizon and Northland as of June 14, 2001**

Allowing Northland to delay the effective date of the FCC's rates would be fundamentally irreconcilable with the FCC's stated goal of encouraging local competition and speeding the deployment of advanced services. The *Order on Remand* mandates "immediate action" because the payment of billions of dollars in "reciprocal compensation for Internet-bound traffic distorts the development of competitive markets," and retards the deployment of advanced services. The FCC noted that CLECs "have targeted ISPs as customers merely to take advantage of reciprocal compensation," instead of competing to provide local service to end user customers.<sup>42</sup> Thus, the "windfall" such compensation offers CLECs such as Northland leads to "classic regulatory arbitrage."<sup>43</sup>

The FCC explained that its "interim compensation mechanism" was for the very purpose of producing "meaningful reductions in intercarrier payments" and imposing "a standstill on any expansion of the old compensation regime."<sup>44</sup> Delaying the implementation of the FCC's new rate regime and allowing Northland to continue receiving compensation for Internet-bound traffic either pursuant to an expired agreement

---

<sup>42</sup> *Order on Remand* ¶¶ 2, 5.

<sup>43</sup> *Id.* ¶¶ 21, 29, 70.

<sup>44</sup> *Id.* ¶¶ 66, 81, 84.

or a preempted New York law, would allow these serious harms to competition to continue unabated.

Moreover, delaying application of the interim rates would encourage CLECs to do exactly what Northland and so many other CLECs have done – obstruct the implementation of the FCC’s *Order on Remand* by stonewalling Verizon during discussions to implement that order.<sup>45</sup> If the Commission declares in this proceeding that the FCC’s rate regime is effective as of June 14, 2001, Northland (and the other CLECs with whom Verizon is negotiating) will no longer have an incentive to delay completion of a memorializing amendment.

The Commission should be extremely wary of establishing a precedent that carriers can unilaterally delay or block the implementation of FCC orders merely by dragging out negotiations of an amendment. Such a precedent would be harmful to the public interest because it puts the power of deciding when to implement a legal change squarely in the hands of the adversely affected carrier, which has a strong incentive to block or delay the change. A precedent that newly imposed compensation regimes are ineffective until the adversely affected party agrees to them cannot be limited to the facts of this proceeding, where the legal change is favorable to Verizon. Nor can such a precedent be limited to changes in rates brought about by FCC orders, but necessarily would also apply to the Commission’s own rate changes. For this reason alone, the Commission should decide that the FCC’s interim rate regime applies to traffic exchanged between Northland and Verizon as of the date that regime became effective, June 14, 2001.

---

<sup>45</sup> Northland has made no attempt to stay application of the *Order on Remand* pending appeal, which would have been the appropriate legal course for Northland to take if it believed that the order should not be implemented.

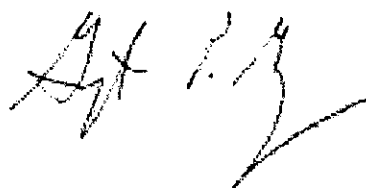
#### IV. CONCLUSION

Verizon has made every reasonable effort to independently resolve this dispute with Northland without success. For this reason and the reasons above, Verizon respectfully requests that the Commission grant the relief requested herein. In light of the substantial amount of time that has passed since the effective date of the *Order on Remand*, Verizon further respectfully requests that the Commission issue its final declaratory order in this proceeding as soon as possible.

Respectfully submitted,

VERIZON NEW YORK INC.

By Its Attorneys



---

Sandra DiIorio Thorn  
Gayton P. Gomez  
Verizon New York Inc.  
1095 Avenue of the Americas  
New York, New York 10036  
(212) 395-6515  
(212) 395-6405  
(212) 768-7568 (fax)  
sandra.d.thorn@verizon.com  
gayton.p.gomez@verizon.com

Kimberly A. Newman  
Hunton & Williams  
1900 K Street, N.W.  
Washington, D.C. 20006  
(202) 955-1500  
knewman@hunton.com

Dated: New York, New York  
April 29, 2002

## EXHIBIT 5

Verizon New York Inc.  
1095 Avenue of the Americas  
Room 3735  
New York, NY 10036  
Tel 212 395-6405  
Fax 212 768-7568

Gayton P. Gomez  
Regulatory Counsel



July 10, 2002

**BY HAND**

Honorable Janet Hand Deixler  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

**Re: Petitions For Relief Under The Expedited Dispute Resolution  
Process In Cases 02-C-0279, 02-C-0293, 02-C-0294, 02-C-0295,  
02-C-0550, and 02-C-0675**

Dear Secretary Deixler:

Over the past four months, Verizon has submitted petitions in the above-referenced cases pursuant to the Commission's Expedited Dispute Resolution Process established in Case 99-C-1529. All six of these petitions concern the issue of reciprocal compensation for Internet-bound traffic. Five of Verizon's petitions — in Cases 02-C-0293, 02-C-0294, 02-C-0295, 02-C-0550, and 02-C-0675 — seek an expedited order declaring that, under the terms of the relevant interconnection agreements, the interim rate regime established in the FCC's *Order on Remand*<sup>1</sup> applies to Internet-bound traffic as of June 14, 2001. One of Verizon's petitions, in Case 02-C-0279, seeks an expedited order declaring that, under the terms of the interconnection agreement between the parties, XO New York LLC ("XO") is not entitled to either reciprocal compensation for Internet-bound traffic or the interim compensation set forth in the *Order on Remand*, and that XO must refund any reciprocal compensation payments it has received for such traffic retroactive to the effective date of that agreement.

After discussions with Staff Counsel, it is Verizon's understanding that the Commission has declined to address these six petitions and that, therefore, Verizon should withdraw them. Based on this understanding, Verizon hereby withdraws its petitions in Cases 02-C-0279, 02-C-0550 and 02-C-0675, and also withdraws its petitions in Cases 02-C-0293, 02-C-0294, and 02-C-

---

<sup>1</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for Internet-bound Traffic*, CC Docket Nos. 96-98 and 99-68, FCC 01-131, Order on Remand and Report and Order (FCC Apr. 27, 2001) ("*Order on Remand*").

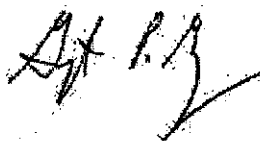
Honorable Janet Hand Deixler

July 10, 2002

Page 2

0295, effective upon the withdrawal of the counterclaims in those cases. Also, unless Verizon hears otherwise from the Commission, Verizon will assume that the Commission will decline to address any future petitions addressing the issue of reciprocal compensation for Internet-bound traffic. I respectfully request that the Commission advise Verizon by letter that its understanding regarding the Commission's position is correct.

Respectfully,



Gayton P. Gomez

Encl.

cc: Karen Nations, Esq. (By U.S. Mail)  
Renardo L. Hicks, Esq. (By U.S. Mail)  
Andrew D. Fisher, Esq. (By U.S. Mail)  
Michael L. Shor, Esq. (By U.S. Mail)  
Michael W. Fleming, Esq. (By U.S. Mail)  
Joseph O. Kahl, Esq. (By U.S. Mail)  
Russell Blau, Esq. (By U.S. Mail)  
Ms. Terry J. Romine (By U.S. Mail)  
Keith J. Roland, Esq. (By U.S. Mail)  
Mr. Gerry Nicholson (By U.S. Mail)  
Michael J. Henry, Esq. (By U.S. Mail)  
Curtis L. Groves, Esq. (By U.S. Mail)  
Darryl M. Bradford, Esq. (By U.S. Mail)  
John J. Hamill, Esq. (By U.S. Mail)  
Daniel J. Weiss, Esq. (By U.S. Mail)



## EXHIBIT 6

# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

## PUBLIC SERVICE COMMISSION

MAUREEN O. HELMER

*Chairman*

THOMAS J. DUNLEAVY

JAMES D. BENNETT

LEONARD A. WEISS

NEAL N. GALVIN



LAWRENCE G. MALONE

*General Counsel*

JANET HAND DEIXLER

*Secretary*

August 7, 2002

Gayton P. Gomez, Esq.  
Verizon New York, Inc.  
1095 Avenue of the Americas  
Room 3735  
New York, New York 10036

Re: Petitions For Relief Under the Expedited Dispute Resolution  
Process in Cases 02-C-0279, 02-C-0293, 02-C-0294, 02-C-0295,  
02-C-0550, and 02-C-0675.

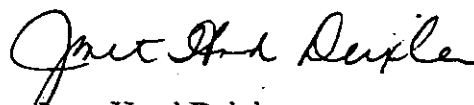
Dear Ms. Gomez:

In a letter dated July 10, 2002, you recited Verizon's understanding that the Commission will not address the six expedited dispute resolution petitions above and, therefore, Verizon was withdrawing them. You also stated Verizon's assumption that the Commission will not address any future petitions addressing contract interpretations of reciprocal compensation for Internet-bound traffic, and requested that the Commission advise Verizon as to the correctness of that assumption.

This letter acknowledges Verizon's withdrawal of the above-referenced cases. The cases will be closed. This letter also confirms that because adequate, alternative forums

exist, the Department will not address any future petitions addressing contract interpretations of reciprocal compensation for Internet-bound traffic.

Very truly yours,

  
Janet Hand Deixler  
Secretary

cc: Sandra Thorne, Esq. (Verizon)  
Saul M. Abrams, Esq. (Staff)  
Karen Nations, Esq.  
Renardo L. Hicks, Esq.  
Andrew D. Fisher, Esq.  
Michael L. Shor, Esq.  
Michael W. Fleming, Esq.  
Joseph O. Kahl, Esq.  
Russell Blau, Esq.  
Ms. Terry J. Romine  
Keith J. Roland, Esq.  
Mr. Gerry Nicholson  
Michael J. Henry, Esq.  
Curtis L. Groves, Esq.  
Darryl M. Bradford, Esq.  
John J. Hamill, Esq.  
Daniel J. Weiss, Esq.